

# ENVIRONMENTAL GUIDANCE REGULATORY BULLETIN

Office of Environmental Guidance RCRA/CERCLA Division (EH-231)

December 1994

## Transporting CERCLA Wastes Off-site; Final Off-Site Rule

### Introduction

On September 22, 1993, the Environmental Protection Agency (EPA) published [58 *Federal Register* (FR) 49200] the final Off-Site Rule, which defines criteria for approving facilities for receiving waste from response actions taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The off-site requirements apply to the off-site management of hazardous substances, pollutants, and contaminants, as defined under CERCLA, that are generated from remedial and removal actions funded or authorized, at least in part, by CERCLA. CERCLA-authorized cleanups include those taken under lead-agency authority, Section 106 Consent Orders, Consent Agreements, Consent Decrees, and Records of Decision (RODs). EPA requires that remedial actions at Federal facilities taken under Sections 104, 106, or 120 of CERCLA comply with the Off-Site Rule for all cleanups enacted through DOE's lead-agency authority.

The primary purpose of the Off-Site Rule is to clarify and codify CERCLA's requirement to prevent wastes generated from remediation activities conducted under CERCLA from contributing to present or future environmental problems at off-

site waste management facilities. Only facilities that meet EPA's acceptability criteria can be used for off-site management of CERCLA waste. Even transfer facilities are required to be acceptable under the final rule before they can accept CERCLA waste. Because the decisions regarding the choice of the remedy for cleanup of a CERCLA site may depend on the acceptability of the receiving facility, the Off-Site Rule could affect both the schedule for cleanup as well as the array of feasible remedies from which to choose.

### Regulatory History

Section 104(c)(3) of CERCLA, which was enacted in 1980, mandated that CERCLA remediation waste be managed and disposed of in an environmentally sound manner. The States were required to ensure that waste facilities, which were in compliance with Subtitle C of the Resource Conservation and Recovery Act (RCRA), were acceptable for receiving CERCLA wastes. Below is a chronology of the Off-Site Rule:

- ❑ January 1983 EPA issued *Guidance on the Requirements for Selecting an Off-Site Option in a Superfund Response Action*. The guidance encouraged facility inspections and correction of all major violations before CERCLA waste was received.
- ❑ November 1985 [40 *Code of Federal Regulations* (CFR) 300]: The National Contingency Plan (NCP) was revised to include the requirements for off-

site receipt of CERCLA wastes. The NCP revisions mandated that facilities chosen to receive CERCLA wastes have permits or the appropriate approval to operate [40 CFR 300.68(a)(3)].

- ❑ November 5, 1985 [50 FR 45933]: EPA issued the Off-Site Policy, entitled *Procedures for Planning and Implementing Off-Site Response Actions*. Under this early policy, a facility was required to operate under a RCRA permit or interim status, have received a compliance inspection within 6 months before receiving waste, address significant violations through appropriate enforcement actions, comply with minimum technology requirements of RCRA, and be in compliance with RCRA manifest disposal requirements. For more information refer to DOE's *Policy on Off-site Treatment, Storage, and Disposal of Non-radioactive Hazardous Waste Memorandum*, June 24, 1986.

- ❑ October 1986: The Superfund Amendments and Reauthorization Act (SARA) was enacted and included an "off-site" clause [Section 121(d)(3)]. SARA required that facilities chosen to receive CERCLA wastes be in compliance with RCRA, as amended by the Hazardous and Solid Waste Amendments (HSWA), and/or the Toxic Substances Control Act (TSCA), and other applicable federal and state laws and regulations. In addition, a facility's land disposal units could not be releasing hazardous wastes or hazardous constituents. Facilities with releases that were controlled under RCRA corrective actions were also considered acceptable for managing CERCLA waste.

- ❑ November 13, 1987 EPA revised the Off-Site Policy and issued it as OSWER Directive No. 9834.11 entitled *Procedures for Implementing Off-site Response Actions*.

- ❑ November 29, 1988 [53 FR 48218]: EPA proposed the Off-Site Rule. The notice commented on the acceptability criteria for facilities and ways to address remediation wastes that were generated prior to the enactment of SARA.

- ❑ September 22, 1993 [58 FR 49200]: EPA promulgated the final rule on the off-site transfer of CERCLA waste.

- ❑ came effective. Refer to DOE Office of Environmental Guidance,

tion Brief, *The Off-Site Rule (EH-231-020/0194)*.

## ***Impact on DOE Activities***

This rule affects both persons conducting CERCLA remedial and removal actions and off-site facilities that might receive waste from those actions. As EPA states in the preamble to the rule, use of well managed facilities is a good business practice. Therefore, the Off-Site Rule is not likely to greatly affect DOE facilities that have already implemented appropriate requirements for selecting off-site facilities and have incorporated these same requirements into the waste management aspects of their remedial programs. A long-term benefit for DOE's remediation projects is a possible increase in the number of acceptable facilities, thus giving rise to greater competition to handle waste generated from CERCLA activities.

DOE will also have to be concerned about the designation of waste management facilities for CERCLA wastes. DOE waste management facilities that might receive waste from CERCLA activities at other DOE sites or from CERCLA activities at other locations of their own site, would

be required to qualify as acceptable under the Off-Site Rule. This process would be an administrative burden and might trigger the need or accelerate the schedule for facility-wide investigations. The Off-site Rule effectively establishes the need for DOE to assess the likelihood of receiving CERCLA waste from off-site, evaluate whether on-site hazardous waste management facilities would be deemed acceptable, and determine actions required to increase their likelihood of acceptance.

## Relevant Definitions

### Facility

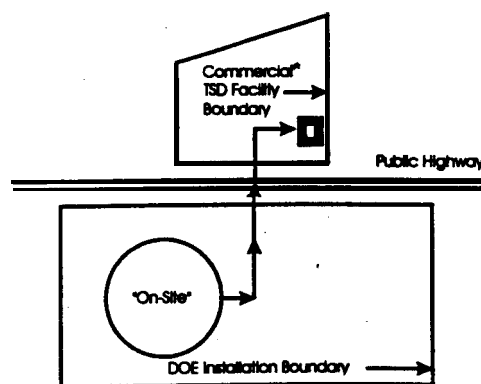
Any structure where hazardous substances are placed, stored, or disposed of, which includes but is not limited to pipes or pipelines, equipment, lagoons, ditches, landfills, motor vehicles, and aircraft (40 CFR 300.5).

### Off-site

EPA defines *off-site* based on the CERCLA definition of *on-site*. On-site is the areal extent of contamination and all suitable areas in very close proximity necessary for the implementation of the response action [40 CFR 300.400(e)(1)]. This definition allows for space to construct treatment systems and other remediation-related facilities to support the CERCLA project. Thus *off-site* is anything that is not on-site under CERCLA.

The decision of whether a waste management facility is off-site is pivotal in determining compliance with the Off-Site Rule. The following graphic scenarios, which are typical on DOE installations, help depict when the requirements of the Off-Site Rule apply to remedial actions.

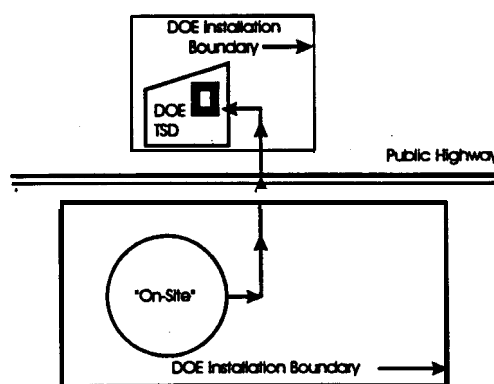
### Scenario 1



Off-Site Rule Would Apply

When wastes are shipped out of the DOE property boundaries to a commercial hazardous waste treatment, storage, and disposal (TSD) facility, the Off-Site Rule applies. The EPA Regional Office would have to deem the commercial TSD facility acceptable before CERCLA wastes could be shipped to the facility.

### Scenario 2

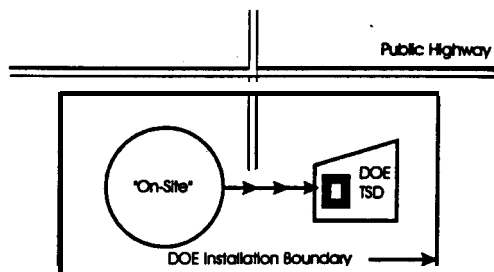


Off-Site Rule Would Apply

If wastes generated during a CERCLA project on a DOE site are shipped to another DOE site, the Off-Site Rule would ap-

ply. The hazardous waste management facility that is on the other DOE installation would have to have be determined acceptable.

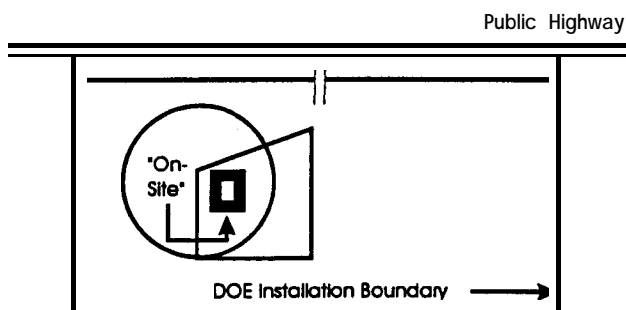
### Scenario 3



Off-Site Rule Would Apply

If remediation wastes from a CERCLA site are taken to a hazardous waste management facility that is within the DOE property boundaries but not within the CERCLA site the Off-Site Rule would apply.

### Scenario 4



Off-Site Rule Would Not Apply

The only case that the Off-Site Rule *does not apply* is the situation where the CERCLA wastes are moved to a hazardous waste management facility that is on the CERCLA site itself.

### Receiving Unit

The unit at a hazardous waste disposal facility that directly receives the CERCLA wastes is defined as the *receiving unit*. Thus a landfill, a tank system, or a warehouse can be defined as the receiving unit if that particular unit is targeted for the placement of CERCLA wastes. For the purpose of implementing the off-site requirements, EPA has determined that acceptability criteria primarily apply to the receiving unit.

### Release

A *release* is spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment" (40 CFR 300.5). The definition includes the abandonment or discarding of barrels, containers, and other closed receptacles. A *release* under the Off-Site Rule *does not include*:

- ❑ *De minimis*, or substantially minor releases that pose little threat to human health or the environmental. An example of a *de minimis* release, as defined by EPA, is one into the air from the temporary opening and closing of a drum's bung.
- ❑ Federally permitted releases that do not pose a threat to human health of the environment. However, the definition ensures that facilities that have not addressed the impact of their releases on human health and the environment, which can be caused by a valid, older permit, are not allowed to receive CERCLA waste.

- ❑ Releases to the air from hazardous waste management units that do not exceed the standards that will be promulgated under RCRA Section 3004(n).

### **Relevant Violations**

The definition of *relevant violation in the* proposed rule was retained in the final rule without change. Relevant violations are significant deviations from regulations, compliance order provisions, or permit conditions designed to ensure...” that wastes are only delivered to authorized facilities, to prevent environmental releases, and to ensure early detection should a release occur. Criminal violations resulting in indictment are also relevant violations. EPA applies the relevant violation criteria to the receiving unit only, unless there is a case where the violation affects the entire facility.

An example of a receiving unit violation would be the failure to operate within the unit’s design and operation requirements. In contrast, facility violations that the Off-Site Rule addresses are the failure to comply with the site’s contingency plan and closure plan requirements for example.

### ***Off-site Rule and Subtitle D Regulations.***

The final rule does not exempt CERCLA waste from meeting the land disposal restrictions (LDR) standards when they are transferred off-site for management. It is important to remember that CERCLA remediation waste may also be a solid or hazardous waste under RCRA. The rule specifies that if a waste is generated during the remediation of a CERCLA site and it is not hazardous under RCRA and is not otherwise regulated (i.e., by TSCA, the Atomic Energy Act, or other applicable federal and state laws), the waste can only be disposed

of in a facility that meets the requirements of the rule (e.g., a permitted Subtitle D municipal solid waste landfill) and is deemed acceptable.

### ***Facility Acceptability Criteria***

All facilities that are considered for use in off-site management of CERCLA waste must be in compliance with RCRA and/or other applicable federal and state laws. The Off-Site Rule divides the potentially hazardous waste management facilities into three categories:

- ❑ RCRA Subtitle C facilities that have a land disposal unit,
- ❑ RCRA Subtitle C facilities that do not have a land disposal unit, and
- ❑ all other facilities that manage CERCLA-derived waste, such as units authorized under TSCA.

Specific requirements must be met for each category of facilities. RCRA-permitted Subtitle C facilities that have land disposal units are acceptable if:

- ❑ the receiving unit has no releases of an hazardous waste, constituent, or substance;
- ❑ the receiving unit meets minimum technology requirements under RCRA Section 3004(o); and
- ❑ any releases from non-receiving units are addressed and in compliance with a legally binding agreement (e.g., a corrective action agreement) before CERCLA waste is placed in the receiving unit.

RCRA Subtitle C facilities that have a valid permit and do not have a land disposal unit are acceptable if the receiving unit has had no releases. At the non-receiv-

ing units, only the environmentally significant releases, which are those releases that pose a threat to public health or the environment must be addressed in a corrective action.

Finally non-RCRA facilities must control environmentally significant releases from the receiving and non-receiving units.

The EPA Regional Office will use the above criteria to determine acceptability. The Regional Off-Site Contacts (ROCs) are the source of information on the acceptability of facilities within each region (see table below). If a facility is determined to be unacceptable, it will not be able to accept CERCLA waste until EPA has enough evidence to change the original determination. The facility must have an acceptable determination at the time the CERCLA waste are transferred off-site to the facility.

| <b>Regional Off-Site Contacts (ROCs)</b> |                                         |                                   |
|------------------------------------------|-----------------------------------------|-----------------------------------|
| <b>Region</b>                            | <b>Primary Contact</b>                  | <b>Backup Contact</b>             |
| I                                        | Lynn Hanifan<br>(617) 573-5755          | Austine Frawley<br>(617) 573-5758 |
| II                                       | Greg Zaccardi<br>(212) 264-9504         | Joel Golumbek (212)<br>264-2638   |
| III                                      | Naomi Henry<br>(215) 597-8338           | Mary Lepkus<br>(215) 597-9189     |
| IV                                       | Edmund Burks<br>(404) 347-7603          | John Dickinson (404)<br>347-7603  |
| V                                        | Gertrud Matuschkovitz<br>(312) 353-7921 | Uylaine McMahon<br>(312) 886-4454 |
| VI                                       | Ron Shannon<br>(214) 655-2282           | Joe Dougherty<br>(214) 655-2281   |
| VII                                      | Gerald McKinney<br>(913) 551-7816       | David Doyle<br>(913) 551-7667     |
| VIII                                     | Terry Brown<br>(303) 293-1823           | George Dancik<br>(303) 293-1506   |
| IX                                       | Diane Bodine<br>(415) 744-2130          | Gloria Brownley<br>(415) 744-2114 |
| X                                        | Ron Lillich<br>(206) 553-6646           | Kevin Schanilec<br>(206) 553-1061 |

## ***Guidance for Fulfilling the Off-Site Rule Requirements***

To prevent delays in the remedial action process, the decisions associated with selection of an off-site facility for managing CERCLA waste must be evaluated at the remedial investigation (RI)/feasibility study (FS) stage of the remedial action process. By doing so the impact of the Off-Site Rule will be identified early in the remedial action process. DOE and contractor staff responsible for RI/FS preparation should address the potential implications of the off-site requirements when deciding on a remedy.

The following items should be considered to ensure that compliance with the off-site rule can be achieved without negatively affecting the remedial action schedule

- ☐ Consider the requirements of the Off-Site Rule early in the remedial action process, when the array of remedial action alternatives is first identified for evaluation. Determine the kinds of waste to be managed and the subset of those waste that will likely be managed in units that must comply with the off-site requirements. Those off-site units could be (1) within the DOE property boundaries, (2) at another DOE site, or (3) at commercial waste management facilities.
- ☐ Contact the ROC to determine if commercial vendors under consideration are acceptable and to initiate the evaluation of units on the DOE site for their acceptability for receiving CERCLA waste. The evaluation would include reviewing information on relevant violations, which the EPA Region or the DOE facility itself might provide. In addition, EPA would determine if releases or signifi-

cant environmental threats occur at the facility.

- ❑ Contracts/agreements with the receiving units should include a requirement that the units receiving the CERCLA waste be acceptable under the Off-Site Rule at the time the CERCLA waste are transferred.
- ❑ Consider the need for both permitting, and/or obtaining an acceptability determination for, off-site units that are planned to manage the waste on the DOE site. To minimize the potential impact of the off-site requirements on remedial action schedules, DOE staff and contractors should attempt to manage waste on-site, when possible.

## ***For More Information***

For a copy of the *Federal Register Notice* (FR 49200, Vol. 529, No. 182, Wednesday, September 22, 1993), call the RCRA Hotline Monday through Friday, 8:30 am to 730 pm EST. The national toll-free number is (800) 424-9346 or in the Washington, D.C. area the number is (703) 920-9810 or TDD (703) 486-3323. Additional copies can be obtained from OSTI at (615) 576-8401 or the Center for Environmental Management Information at (800) 736-3282.

Please direct questions about the Off-Site Rule to Beverly Whitehead, DOE Office of Environmental Guidance, RCRA/CERCLA Division, EH-231, 1000 Independence Ave., S.W., Washington, D.C., 20585, at (202) 586-6073.